



## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 679

#### RIN 0648-BL42

### Fisheries of the Exclusive Economic Zone Off Alaska; Bering Sea and Aleutian Islands Halibut Abundance-Based Management of Amendment 80 Prohibited Species Catch Limit

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of availability; request for comments.

**SUMMARY:** The North Pacific Fishery Management Council (Council) submitted Amendment 123 to the Fishery Management Plan (FMP) for Groundfish of the Bering Sea and Aleutian Islands Management Area (BSAI FMP) to the Secretary of Commerce (Secretary) for review. If approved, Amendment 123 would amend regulations governing Pacific halibut (*Hippoglossus stenolepis*) (halibut) prohibited species catch (PSC), or bycatch, limits in the Bering Sea and Aleutian Islands (BSAI) to link the halibut PSC limit for the Amendment 80 commercial groundfish trawl fleet in the BSAI groundfish fisheries to halibut abundance. This action is necessary to comply with the requirements of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). In particular, National Standard 9 and National Standard 1 require fishery management plans to minimize halibut PSC to the extent practicable while achieving optimum yield in the BSAI groundfish fisheries on a continuing basis. Further, National Standard 4 requires fishery management plans to ensure that when it becomes necessary to allocate or assign fishing privileges among various U.S. fishermen, such allocation shall be fair and equitable, reasonably calculated to promote conservation, and carried out

in such manner that no particular individual, corporation, or other entity acquires an excessive share of such privileges. National Standard 8 requires that conservation and management measures take into account the importance of fishery resources to fishing communities by utilizing economic and social data that are based upon the best scientific information available in order to provide for the sustained participation of such communities and, to the extent practicable, minimize adverse economic impacts on such communities. Amendment 123 is intended to promote the goals and objectives of the Magnuson-Stevens Act, the BSAI FMP, and other applicable laws.

**DATES:** Comments must be received no later than *[INSERT DATE 60 DAYS AFTER THE DATE OF PUBLICATION IN THE FEDERAL REGISTER]*.

**ADDRESSES:** You may submit comments on this document, identified by NOAA-NMFS-2022-0088, by any of the following methods:

- **Electronic Submission:** Submit all electronic public comments via the Federal eRulemaking Portal. Go to <https://www.regulations.gov> and enter [NOAA-NMFS-2022-0088] in the Search box. Click the “Comment Now!” icon, complete the required fields, and enter or attach your comments. **Mail:** Submit written comments to Josh Keaton, Acting Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS, Attn: Records Office. Mail comments to P.O. Box 21668, Juneau, AK 99802-1668.

*Instructions:* Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on [www.regulations.gov](https://www.regulations.gov) without change. All personal identifying information (*e.g.*, name, address), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly

accessible. NMFS will accept anonymous comments (enter “N/A” in the required fields if you wish to remain anonymous).

Electronic copies of the final Environmental Impact Statement and the Regulatory Impact Review (collectively referred to as the “Analysis”) prepared for this proposed rule may be obtained from *www.regulations.gov*.

**FOR FURTHER INFORMATION CONTACT:** Bridget Mansfield, 907-586-7642.

**SUPPLEMENTARY INFORMATION:** The Magnuson-Stevens Act requires that each regional fishery management council submit any fishery management plan amendment it prepares to NMFS for review and approval, disapproval, or partial approval by the Secretary. The Magnuson-Stevens Act also requires that NMFS, upon receiving an FMP amendment, immediately publish a notice in the **Federal Register** announcing that the amendment is available for public review and comment. This notice announces that proposed Amendment 123 to the BSAI FMP is available for public review and comment.

NMFS manages the U.S. groundfish fisheries in the exclusive economic zone under the BSAI FMP. The Council prepared the BSAI FMP under the authority of the Magnuson-Stevens Act (16 U.S.C. 1801 *et seq.*). Regulations governing U.S. fisheries and implementing the BSAI FMP appear at 50 CFR parts 600 and 679. The International Pacific Halibut Commission (IPHC) and NMFS manage Pacific halibut fisheries through regulations established under the authority of the Northern Pacific Halibut Act of 1982 (Halibut Act) (16 U.S.C. 773-773k). The IPHC adopts regulations governing the target fishery for Pacific halibut under the Convention between the United States and Canada for the Preservation of the Halibut Fishery of the Northern Pacific Ocean and Bering Sea (Halibut Convention). For the United States, regulations governing the fishery for Pacific halibut developed by the IPHC are subject to acceptance by the Secretary of State with concurrence from the Secretary of Commerce. This action regulates bycatch in the

groundfish fisheries under the BSAI FMP. Therefore, the proposed action was developed within the Council process and recommended to NMFS for implementation.

Pacific halibut is fully utilized in Alaska as a target species in subsistence, personal use, recreational (sport), and commercial halibut fisheries. Halibut has significant social, cultural, and economic importance to fishery participants and fishing communities throughout the geographical range of the resource. Halibut is also incidentally taken as bycatch in commercial groundfish fisheries. In recent years, catch limits for the commercial halibut fishery in the BSAI have declined in response to decreasing halibut spawning biomass although halibut catch limits increased in 2021, while limits on the maximum amount of halibut bycatch allowed in the groundfish fisheries have remained constant since 2015, when they were reduced under BSAI FMP Amendment 111. This BSAI FMP amendment, if approved, would set annual halibut PSC limits in the BSAI Amendment 80 sector groundfish fisheries based on halibut abundance, which is the sector with the largest share of PSC limits. This proposed approach is consistent with the requirements of the Magnuson-Stevens Act to minimize bycatch to the extent practicable while achieving, on a continuing basis, optimum yield from the groundfish fisheries.

Halibut is not a groundfish species under the BSAI FMP and, therefore, is not subject to provisions of the Magnuson-Stevens Act requiring the establishment of an annual overfishing limit (OFL), an acceptable biological catch (ABC), or a total allowable catch (TAC) limit. This is because it is subject to the Halibut Convention. Although halibut is not managed under an OFL, ABC, or TAC, the IPHC has developed a harvest policy to control removals during conditions of declining or poor stock abundance. The IPHC harvest policy includes a harvest control rule that reduces commercial harvest rates if the stock is estimated to have fallen below established thresholds for female spawning biomass. The harvest control rule would severely curtail

removals during times of particularly poor stock conditions. The harvest control rule has not been triggered, even during the most recent years of relatively low exploitable biomass (see Section 3.1.1.1 and Section 3.1.2.1 of the Final Environmental Impact Statement and the Regulatory Impact Review (collectively referred to as the “Analysis”)).

The IPHC conducts an annual stock assessment for the coastwide halibut stock. Based on the most recent stock assessment for Pacific halibut, the estimated spawning stock biomass has been stable since 2010. Stock assessment models used by the IPHC in 2020 project a decreasing female spawning biomass over the next few years, assuming current removal rates from all sources. Advice from the most recent stock assessment ensemble is presented annually to the IPHC as a risk-based decision matrix that combines different catch levels and various performance metrics. In 2017, the previous IPHC harvest policy was replaced with an interim harvest strategy policy while a management strategy evaluation process is underway. This approach sets a coastwide commercial catch limit considering mortality from all sources and then distributes the commercial catch limit across IPHC Regulatory Areas using estimates of stock distribution from the IPHC fishery independent setline survey and relative harvest rates.

The commercial halibut fishery in the BSAI is managed by NMFS under the Individual Fishing Quota (IFQ) and Community Development Quota (CDQ) Programs that allocate exclusive harvest privileges. The IFQ Program was implemented in 1995 (58 FR 59375, November 9, 1993). The Council and NMFS designed the IFQ Program to end a wasteful and unsafe “race for fish,” and to maintain the social and economic character of the fixed-gear fisheries and the coastal fishing communities where many of these fisheries are based. The CDQ Program was established in 1992 (57 FR 54936, November 23, 1992) and amended substantially by the Coast Guard and Maritime Transportation Act of 2006 (Pub. L. 109-241)). Under Section 305(i)(1)(D) of the Magnuson-Stevens Act, 65 villages are authorized to participate in the CDQ Program, represented by 6 CDQ

groups (16 U.S.C. 1855(i)(1)(D)). CDQ groups manage and administer allocations of crab, groundfish, and halibut, and use the revenue derived from the harvest of CDQ allocations to fund economic development activities and provide employment opportunities on behalf of the villages they represent. The amount of halibut for commercial harvest allocated to the CDQ Program varies by halibut management area and ranges from 20 to 100 percent of the commercial catch limits assigned to Areas 4B, 4C, 4D, and 4E.

The combined CDQ and IFQ halibut fisheries in Area 4 were harvested by an average of approximately 120 vessels from 2015 through 2019. The CDQ and IFQ halibut fisheries provide revenue to vessel owners and crew that harvest halibut. These fisheries also provide economic benefits to shore-based halibut processors and socioeconomic benefits to BSAI fishing communities that provide support services to the halibut harvesting and processing sectors. From 2015 through 2019, Area 4 halibut ex-vessel revenues declined by 32 percent, resulting in negative economic impacts for fishery participants and affected fishing communities due to changing market conditions, while catch of halibut in Area 4 has remained relatively constant.

In Area 4, the specific proportion of halibut removals that are taken as PSC in the groundfish fisheries versus catch in the commercial halibut fishery has shifted over time. From 1990 to 1996, commercial halibut fisheries averaged 37 percent and PSC averaged 60 percent of total halibut removals. From 1997 to 2011, commercial halibut fishery removals increased as a portion of total removals; commercial halibut fisheries averaged 57 percent and PSC averaged 41 percent of total halibut removals. From 2012 through 2014, commercial halibut fishery removals decreased as a portion of total removals; commercial halibut fishery averaged 41 percent and PSC averaged 55 percent of total removals. From 2016 through 2019, commercial halibut fishery averaged 52 percent and PSC averaged 47 percent of total removals.

Halibut PSC is taken by vessels using all gear types, but it occurs primarily in the trawl and hook-and-line groundfish fisheries. NMFS manages halibut bycatch in the BSAI by (1) establishing halibut PSC limits for trawl and non-trawl fisheries; (2) apportioning those halibut PSC limits to groundfish sectors, fishery categories, and seasons; and (3) managing groundfish fisheries to prevent PSC from exceeding established limits.

Current halibut PSC limits for BSAI groundfish fisheries were established by Amendment 111 to the BSAI FMP in 2016 (81 FR 24714, April 27, 2016). The current total annual halibut PSC limit for BSAI groundfish fisheries is 3,515 metric tons (mt). Of that, 1,745 mt are apportioned to the Amendment 80 sector, which is comprised of 27 non-pollock trawl catcher/processors. Of the four BSAI groundfish fishery sectors, the Amendment 80 sector is apportioned the majority of halibut PSC in the BSAI (approximately 50 percent). For this and several reasons described in the proposed rule implementing Amendment 123, the Council recommended, and NMFS agrees, that this proposed amendment should only affect the halibut PSC limit for the Amendment 80 sector.

The Amendment 80 sector halibut PSC limit of 1,745 mt is apportioned between Amendment 80 cooperatives and the Amendment 80 limited access fishery according to the process specified at 50 CFR 679.91. Amendment 80 cooperatives are responsible for coordinating fishing activities to ensure the cooperative halibut PSC allocation is not exceeded. The Amendment 80 groundfish fisheries provide revenue to Amendment 80 vessel owners and crew members that harvest and process groundfish. In addition, the fisheries provide socioeconomic benefits to fishing communities that provide support services for Amendment 80 vessel operations.

The halibut PSC limit established for each BSAI groundfish sector is an upper limit on halibut PSC for that sector for each year. However, the amount of halibut PSC

used by a BSAI groundfish sector is almost always less than its halibut PSC limit. Halibut PSC use is less than the halibut PSC limit due to a range of operational factors, including the need to avoid a closure or enforcement action if a PSC allocation is reached. The current halibut PSC limit for the Amendment 80 sector is 1,745 mt, the non-Amendment 80 trawl limited access sector limit is 745 mt, the CDQ limit is 315 mt, and the non-trawl sector limit is 710 mt. From 2010 through 2020, the Amendment 80 sector has accounted for roughly 60 percent of the overall BSAI groundfish trawl PSC mortality. In recent years, catch limits for the commercial halibut fishery in the BSAI have declined, while these limits on the maximum amount of halibut PSC have remained constant, making halibut bycatch a larger proportion of total removal.

Therefore, consistent with the Council's purpose and need statement for this amendment to prevent halibut PSC from becoming a larger proportion of total removals in the BSAI as halibut abundance declines, the Amendment 80 halibut PSC limit should decline in proportion to reduced amounts of halibut available for harvest by all users. The proposed amendment balances the interests of the two largest halibut user groups in the BSAI, the directed commercial halibut fishery and the Amendment 80 sector, as well as other users including subsistence and recreational, by establishing abundance-based halibut PSC limits for the Amendment 80 sector. This abundance-based approach is consistent with the IPHC management approach for the directed commercial halibut fisheries off Alaska, which establishes annual catch limits that vary with halibut abundance.

In any given year, results from the most recent IPHC setline survey index for halibut in Area 4ABCDE would be categorized into one of four ranges including very low, low, medium, and high. Annual results from the NMFS Alaska Fisheries Science Center (AFSC) Eastern Bering Sea (EBS) trawl survey index for halibut would be categorized into a high or low range. Under this proposed amendment, each year the



intercept of the most recent survey results in the proposed index table would establish the annual halibut PSC limit for the Amendment 80 sector. Those limits would range from the current Amendment 80 halibut PSC limit when abundance is high in the IPHC setline survey to 35 percent below the current limit when abundance is very low in the IPHC setline survey.

In December 2021, the Council recommended, and NMFS now proposes, Amendment 123 to link the halibut PSC limit for the Amendment 80 commercial groundfish trawl fleet in the BSAI groundfish fisheries to halibut abundance. In recommending Amendment 123, the Council intends to minimize halibut PSC to the extent practicable while achieving optimum yield in the BSAI groundfish fisheries on a continuing basis. The amendment, if approved, would be expected to provide incentives for the Amendment 80 fleet to minimize halibut mortality at all times. Achievement of these objectives could result in additional harvest opportunities in the directed commercial halibut fisheries, helping to provide for the sustained participation of such communities that participate in those directed fisheries and allowing for a fair and equitable allocation of the resource. Based on a review of the scientific information and consideration of the revised National Standard guidelines, the Council and NMFS determined that reducing halibut PSC with declining halibut abundance provides conservation benefits, as defined by the Magnuson-Stevens Act. The Council and NMFS determined that this proposed amendment, if approved, may provide additional harvest opportunities for the commercial halibut fisheries.

Amendment 123 would amend Sections 3.6.2 and 3.7.5 of the BSAI FMP to establish the link between the halibut PSC limit for the Amendment 80 sector in the BSAI groundfish fisheries and halibut abundance. Amendment 123 would allow NMFS to annually set the halibut PSC limit for the Amendment 80 sector according to halibut abundance indices from the most recent annual IPHC setline survey and the NMFS

AFSC EBS shelf trawl survey. Section 3.7.5.2 of the BSAI FMP currently apportions the halibut PSC limit in the BSAI between the Amendment 80 sector and the BSAI trawl limited access sector and sets the annual halibut mortality PSC limit for the Amendment 80 sector at 1,745 mt. This static limit would be replaced by instructions indicating that the limit would be set annually. Section 3.6.2.1.4 of the BSAI FMP reiterates the halibut PSC limit in the BSAI for the Amendment 80 sector is set at 1,745 mt. The revision in this section would replace the static limit with the process for setting the annual halibut mortality PSC limit for the Amendment 80 sector. That process would be based on a table with pre-established halibut abundance ranges from the IPHC survey setline index in Area 4ABCDE and the AFSC EBS shelf trawl survey index. The annual Amendment 80 sector halibut PSC limit would be set at the value found at the intercept of the results from the most recent IPHC setline survey in Area 4ABCDE and the most recent AFSC EBS shelf trawl survey.

NMFS is soliciting public comments on proposed Amendment 123 through the end of the comment period (see **DATES**). NMFS intends to publish in the **Federal Register** and to seek public comment on a proposed rule that would implement Amendment 123, following NMFS's evaluation of the proposed rule under the Magnuson-Stevens Act.

Respondents do not need to submit the same comments on Amendment 123 and the proposed rule. All relevant written comments received by the end of the applicable comment period, whether specifically directed to the BSAI FMP amendment or the proposed rule will be considered by NMFS in the approval/disapproval decision for Amendments 123 and addressed in the response to comments in the final decision. Comments received after the end of the applicable comment period will not be considered in the approval/disapproval decision on Amendment 123. To be considered,

comments must be received, not just postmarked or otherwise transmitted, by the last day of the comment period (see **DATES**).

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: November 3, 2022.

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